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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAY 26 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of

The Telephone Consumer Protection  
Act of 1991

CC Docket No. 92-90

COMMENTS OF TELOCATOR

Telocator, the Personal Communications Industry Association, submits these comments on the above referenced Notice of Proposed Rulemaking in the matter of establishing regulations for the purpose of implementing Public Law 102-243, the Telephone Consumer Protection Act of 1991 ("TCPA"). Telocator represents paging, cellular, personal communications service ("PCS") and other land mobile companies, which provide wireless communications services to nearly twenty million customers in the United States today.

The proliferation of automatic telephone dialing systems used for telemarketing purposes has created serious problems for the mobile services industry and the clients for which it provides often vital communications services. Auto dialer systems can (and have) completely shut down critical communications systems operated by paging and cellular entities, creating a serious nuisance to paging and cellular customers. When, as is often the case, wireless communications services are used for emergency alerting purposes, auto dialer calls can set off "false alarms" that are costly and disruptive to the medical or other emergency response operations. Since calls to most wireless services incur charges to

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the called party, auto dialer systems have needlessly driven up the cost of wireless service at the same time they diminish these services' effectiveness and desirability.

Accordingly, the association was an active proponent of the legislation. We are, therefore, anxious to see regulations put in place to implement TCPA and put a halt to problems the industry (and its customers) have faced.

I. THE TCPA PLACES AN ABSOLUTE PROHIBITION ON AUTO DIALER CALLS TO NUMBERS ASSOCIATED WITH MOBILE SERVICES

Because of the seriousness of the disruptions caused by auto dialer calls to numbers associated with mobile services, the TCPA places an absolute prohibition on auto dialer calls to such numbers.<sup>1</sup> As the Commission's Notice of Proposed Rulemaking correctly states (at paragraph 19), the prohibitions contained in this section of legislation [Section 227(b)(1)(A)] take precedence over and supersede any of the permissible exceptions that the

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<sup>1</sup> "It shall be unlawful for any person within the United States to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call." Section 227(b)(1)(A)(iii). Other emergency and medical facility telephones are also included in this section's prohibition against auto dialer calls.

present rulemaking seeks to define.<sup>2</sup> The only statutorily permissible exceptions to the absolute prohibition against auto dialer calls to telephone numbers associated with entities identified in Section 227(b)(1)(A) set forth in the TCPA (including numbers associated with paging, cellular and other mobile services) are instances in which the called party has given prior express consent or for calls made for an emergency purpose.

In order to avoid confusion and inadvertent violation of the statute's clear requirements, the regulations adopted by the Commission in this proceeding should explicitly and prominently highlight the absolute prohibitions contained in Section 227(b)(1)(A) and emphasize the fact that the rules' exceptions to the prohibitions of the statute do not apply to this class of services.

II. THE COMMISSION MUST CORRECT ITS PROPOSED RULE'S OMISSION OF "OTHER RADIO COMMON CARRIER SERVICES" FROM THE DELIVERY RESTRICTIONS ENACTED IN THE TCPA

The Commission proposes the addition of a Subpart K to Title 47 of the Code of Federal Regulations, parts 64 and 68, as implementing regulations of the TCPA. The proposed "Section

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<sup>2</sup> Indeed, the statutorily permissible exceptions to the prohibitions of the statute that the Congress directed the Commission to promulgate regulations to implement, and which are the focus of the bulk of the present rulemaking, are explicitly limited to exemptions from the requirements of paragraph (1)(B) of Section 227(b), which deals with calls to residential telephone lines. [Section 227(b)(2)(B)].

64.1100: Delivery Restrictions" contains the prohibition against auto dialer calls to mobile services enacted in Section 227(b)(1)(A) in the TCPA. There is, however, an important omission in the Commission proposal.

As has been noted, the TCPA prohibits auto dialer calls to "any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."<sup>3</sup> The proposed rule contained in the Notice repeats this language verbatim, except that it omits the clause "or other radio common carrier services" from the paragraph. This error should be corrected.

Such a correction is required in order to make the implementing regulation consistent with the statutory authority upon which it is based. Moreover, existing radio common carrier services (such as traditional, mobile radiotelephone service) and future radio services that may be offered on a common carrier basis require the same protections as existing paging, cellular and SMR services and cannot appropriately be arbitrarily excluded from the Commission's rules.

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<sup>3</sup> Section 227(b)(1)(A)(iii).

III. THE COSTS OF IMPLEMENTING A MEANS FOR PREVENTING AUTO DIALER CALLS TO ANY PROHIBITED NUMBER (SUCH AS A NATIONAL "DO NOT CALL" DATABASE) SHOULD BE BORNE BY THOSE ENTITIES ENGAGED IN AUTO DIALER-BASED TELEPHONE SOLICITATIONS

The Commission seeks comment on a variety of mechanisms that might be implemented to facilitate efforts by users of auto dialer devices to avoid making calls prohibited by the TCPA. The Commission tentatively finds that any such mechanism "would not be a government sponsored institution and would not receive federal funds or a federal contract for its establishment, operation or maintenance."<sup>4</sup>

Telocator concurs that the cost and responsibility for compliance with the TCPA should not fall upon the regulatory agency responsible for the Act's enforcement. Moreover, these costs should not be passed on to those persons exercising their right under the legislation to avoid receiving unsolicited auto dialer calls or to the general telephone rate base. The cost and responsibility to operate auto dialers in a manner consistent with the TCPA should be borne entirely by those entities who chose to engage in auto dialer-based telephone activities.

IV. CONCLUSION

Telocator looks forward to the Commission's prompt enactment of regulations implementing the TCPA. As set forth in these

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<sup>4</sup> Paragraph 29 of the Notice.

comments, we respectively urge the following changes or additions to the Commission's proposed rules:

1. The legislation's absolute prohibition against auto dialer calls to mobile services (except in instances in which the called party has given prior express consent or for calls made for an emergency purpose) is clear and unambiguous. The Commission rules should clearly and explicitly highlight the fact that none of the exceptions it proposes apply to this restriction;
2. The "other radio common carrier service" language contained in the legislation should be restored to Section 64.1100(a)(1)(iii) of the proposed rule; and
3. The costs of and responsibility for implementing means of preventing auto dialer calls to any prohibited number are appropriately incumbent upon those entities engaged in auto dialer-based telephone practices. Any such costs should not be borne, directly or indirectly, by the regulatory agency enforcing the regulation nor the members of the general public who avail themselves of TCPA's protections.

Respectfully submitted,

TELOCATOR, THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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